

**REMARKS**

Claims 1, 29 and 33 have been amended to better distinguish the claimed invention from the prior art. The added limitation is similar to that previously found in cancelled claim 2. No new matter has been entered

The art rejections are in error.

Considering first the rejection of claims 1-11, 13, 14, 16-21, 26-33, and 35 under 35 U.S.C. § 102(b) as anticipated by Küchel (U.S. Patent No. 4,872,755), claim 2 has been cancelled. As to the remaining claims, each of independent claims 1, 29, and 33, as amended, requires in part, beams (or wavefronts) that follow a substantially common path through the interferometric system. This feature is found in original claim 2, and in the drawing figures. Küchel does not teach this. As explained in the previous amendment, Küchel teaches a delay device for polarizing the respective beams (col. 3, lines 1-3; col. 10, lines 27-28). Küchel further underscores the importance of the delay device to the invention (col. 4, lines 8-13). Due to the delay device, the optical length of the respective beams of Küchel differs substantially (col. 4, lines 37-46). Thus, Küchel cannot achieve or render obvious any of independent claims 1, 29, or 33, or any of claims 3-11, 13, 14, 16-21, 26-28, and 30-32 that depend directly or indirectly on claim 1 or claim 29 as the case may be.

Turning to the rejection of claims 12, 15, 22-25, and 34 under 35 U.S.C. § 103(a) as being unpatentable over Küchel, claims 12, 15, and 22-25 depend directly or indirectly on claim 1. The deficiencies of Küchel vis-à-vis claim 1 are discussed above. Dependent claims 12, 15, and 22-25 are allowable over Küchel for the same reasons above adduced relative to claim 1, as well as for their own additional limitations.

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Turning specifically to the rejection of claim 34, claim 34 requires in part, a quarter waveplate positioned between the reference object and the test object. Küchel does not teach this feature. Rather, Küchel teaches a quarter waveplate located in the source module. Even assuming *arguendo* that the Examiner is generally correct that the relocation of a working part only requires routine skill in the art, it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). The Examiner cannot ignore that Küchel specifically teaches away from the use of a quarter waveplate in a Fizeau interferometer between the test and reference sources (col. 10, lines 8-15).

Moreover, as argued in the previous amendment, the quarter waveplate required by claim 34 functions differently from the quarter waveplate in the source module of Küchel. The Examiner's general assumption that the relocation of a working part only requires routine skill in the art fails to consider many circumstances, as in the present case, where the relocation of the working part in question would render the prior art device unsatisfactory for its intended purpose without additional changes. See *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). The Examiner confuses this issue by contending that the functional purpose of an element in a claim drawn to structure does not patentably distinguish from the prior art. The Examiner's contention is misplaced where the limitation in question is not presented in functional language lacking patentable weight. Instead, the function of the element in the prior art was highlighted in the previous amendment to demonstrate that the proposed modification would not be obvious to one having ordinary skill in the art.

For the reasons stated above, Küchel cannot render obvious any of claims 12, 15, 22-25 and 34.

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New claims 36-39 have been added to further scope the invention and find support, e.g. in paragraphs 0030-0034 of the published application.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

Added claim, RCE and Extension fees are being paid via EFS WEB in the amount of \$768.00.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being deposited with the United States Patent Office via the electronic filing procedure on December 8, 2008.

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